

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 24th Floor
San Francisco, California 94105**

**NOTICE OF PROPOSED ACTION AND
NOTICE OF PUBLIC HEARING**

**Repeal of Disability Income Insurance Benefit Reduction Regulations Article 2.2
November 4, 2008
REG-2008-00033**

SUBJECT OF HEARING:

Notice is hereby given that a public hearing will be held regarding the repeal of California Code of Regulations (“CCR”), Title 10, Chapter 5, Subchapter 2 Policy Forms and Other Documents, Article 2.2. Limits on Benefit Reductions in Group Disability Income Insurance Policies, Sections 2232.45.1 (Authority and Purpose), 2232.45.2 (Benefit Reductions Shall Not Be Based on Involuntary Retirement), 2232.45.3 (Benefit Reductions Shall Not Be Based on Estimated Worker’s Compensation Temporary Disability Benefits Not Actually Received by the Insured), 2232.45.4 (Benefit Reductions Shall Not Be Based on Worker’s Compensation Permanent Disability), and 2232.45.5 (Benefit Reductions Based on Earnings Received for Work Performed While Disabled).

AUTHORITY AND REFERENCE:

The Insurance Commissioner proposes the repeal of the new Title 10, Chapter 5, Subchapter 2, Article 2.2 Limits on Benefit Reductions in Disability Income Insurance Policies, pursuant to the authority set forth below:

Section 2232.45.1: Authority cited: Section 790.10, Insurance Code; *CalFarm Ins. Co. v. Deukmejian*, (1989) 48 Cal.3d 805; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216. Reference: Sections 790.02, 790.03, Insurance Code.

Section 2232.45.2: Authority cited: Section 790.10, Insurance Code; *CalFarm Ins. Co. v. Deukmejian*, (1989) 48 Cal.3d 805; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216. Reference: Sections 790.02, 790.03, Insurance Code; *Kalvinskis v. California Institute of Technology* (9th Cir. 1996) 96 F.3d 1305; *Gruenberg v. Aetna Insurance Company* (1973) 9 Cal.3d 566; *Smith v. Alum Rock Union Elementary School District* (1992) 6 Cal. App.4th 1651.

Section 2232.45.3: Authority cited: Section 790.10, Insurance Code; *CalFarm Ins. Co. v. Deukmejian*, (1989) 48 Cal.3d 805; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216. Reference: Sections 790.02, 790.03, Insurance Code; *Silberg v. Cal. Life Ins. Co.* (1974) 11 Cal. 3d 452.

Section 2232.45.4: Authority cited: Section 790.10, Insurance Code; *CalFarm Ins. Co. v.*

Deukmejian, (1989) 48 Cal.3d 805; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216. Reference: Sections 790.02, 790.03, Insurance Code; *Erreca v. Western States Life Insurance Co.* (1942) 19 Cal.2d 388; *Russell v. Bankers Life Co.* (1975) 46 Cal. App.3d 405; *Canova v. N.L.R.B.* (1983) 708 F.2d 1498.

Section 2232.45.5: Authority cited: Section 790.10, Insurance Code; *CalFarm Ins. Co. v. Deukmejian*, (1989) 48 Cal.3d 805; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216. Reference: Sections 790.02, 790.03, Insurance Code; *Gruenberg v. Aetna Insurance Company* (1973) 9 Cal.3d 566.

HEARING DATE AND LOCATION:

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the repeal of the regulations described above as follows:

Date and time: **January 8, 2009**
 10:00 am*
Location: **Department of Insurance Hearing Room**
 45 Fremont Street, 22nd Floor
 San Francisco, CA 94105

*The hearing will continue on the date noted until all testimony has been completed or 5:00 p.m., whichever is earlier.

PRESENTATION OF WRITTEN AND/OR ORAL COMMENTS; CONTACT PERSONS:

All persons are invited to present oral and/or written comments at the scheduled public hearing. Written comments should be addressed to the contact person:

Nancy Hom, Staff Counsel III
California Department of Insurance
45 Fremont Street, 24th Floor
San Francisco, CA 94105
Telephone: (415) 538-4144

Questions regarding procedure, the hearing, comments, or the substance of the proposed action should be addressed to the contact person listed above. If she is unavailable, inquiries may be addressed to the backup contact person:

Vanessa Davenport, Staff Counsel III
California Department of Insurance
45 Fremont Street, 24th Floor
San Francisco, CA 94105

Telephone: (415) 538-4423

DEADLINE FOR WRITTEN COMMENTS:

All persons are invited to submit written comments on the proposed repeal of the regulations during the public comment period. **The public comment period will end at 5:00 p.m. on January 8, 2009.** All written comments, whether submitted at the hearing, or by U.S. mail, or by e-mail or facsimile, must be received by the Insurance Commissioner, c/o the contact person at the address listed above, no later than **5:00 p.m. on January 8, 2009.** Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE:

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: homn@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are sent to the attention of the contact person at the following facsimile number: (415) 904-5729. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the January 8, 2009 at 5:00 p.m. deadline for written comments.**

ACCESS TO HEARING ROOMS:

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person(s) for the hearing in order to make special arrangements, if necessary.

ADVOCACY OR WITNESS FEES:

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of Title 10 of the California Code of Regulations, in connection with their participation in this matter. Interested persons should contact the Office of the Public Advisor at the following address to inquire about the appropriate procedures:

California Department of Insurance
Office of the Public Advisor
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
(916) 492-3559

A copy of any written materials submitted to the Public Advisor regarding this rulemaking must also be submitted to the contact person for this hearing. Please contact the Office of the Public Advisor for further information.

INFORMATIVE DIGEST:

POLICY STATEMENT OVERVIEW

Since adoption of these sections earlier this year, the Commissioner has reevaluated the issue of offset clauses in the disability insurance market. Based upon this review he has concluded that the issue is best addressed through enforcement proceedings pursuant to section 790.06 of the Insurance Code when and if he discovers individual insurers employing illegal offset clauses in their disability insurance policies. Any such enforcement action will be based upon existing state and federal statutory and common law, therefore the regulations are not necessary and are being repealed.

SUMMARY OF EXISTING LAW; EFFECT OF PROPOSED ACTION,

Repeal of Article 2.2

California Code of Regulations Title 10, Chapter 5, Subchapter 2, titled “Policy Forms and Other Documents,” contains regulations which govern the filing and contents of certain forms required to be filed with the Department of Insurance. Article 2.2 of this Subchapter establishes Limits on Benefit Reductions in Group Disability Income Insurance Policies. This rulemaking repeals Article 2.2.

DOCUMENTS INCORPORATED BY REFERENCE

The proposed repeal of the regulations does not incorporate any documents by reference.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed repeal of the regulations does not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO ANY STATE OR LOCAL AGENCY OR SCHOOL DISTRICT OR IN FEDERAL FUNDING:

The Commissioner has determined that the proposed repeal of the regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE:

The Commissioner has made an initial determination that repeal of the proposed regulations may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The types of businesses that may be affected are insurance companies. Insurance companies authorized to transact disability insurance in California may incur some costs as a result of changing their internal procedures to ensure compliance with state and federal statutory and common law governing the use of offset clauses. The Commissioner has not considered other proposed alternatives that would lessen any adverse economic impact on

business and invites interested parties to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses;
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses;
- (iii) The use of performance standards rather than prescriptive standards;
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR ENTITIES/BUSINESSES:

The Commissioner has determined that there is likely to be some cost impact for insurance companies in reasonable compliance with the proposed repeal of the regulations, although the extent of the cost impact is unknown. The cost impact would include the cost of evaluating policy forms to ensure that they comply with state and federal statutory and common law governing the use of offset clauses.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA:

The Commissioner is required to assess any impact the proposed repeal of the regulations may have on the creation or elimination of jobs within the State of California as well as the creation of new businesses, the elimination of existing businesses, and the expansion of businesses currently doing business within the State. The Commissioner does not foresee that the proposed repeal of the regulations will have an impact on any of the above but invites interested parties to comment on this issue.

IMPACT ON HOUSING COSTS:

The matters proposed herein will have no significant effect on housing costs.

ALTERNATIVES:

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the repeal of the regulations is proposed or would be as effective as and less burdensome to affected private persons than the proposed repeal of the regulations. The Commissioner invites public comment on alternatives to repealing the regulations.

IMPACT ON SMALL BUSINESS:

The Commissioner has determined that the proposed repeal of the regulations will not affect small businesses. Pursuant to Government Code section 11342.610(b)(2), insurers are not small businesses.

COMPARABLE FEDERAL LAW:

There are no existing federal regulations or statutes comparable to the regulations which the Commissioner proposes to repeal.

TEXT OF REGULATIONS TO BE REPEALED AND INITIAL STATEMENT OF REASONS:

The Department has prepared an Initial Statement of Reasons that sets forth the reasons for the proposed repeal of the regulations. Upon request, the Initial Statement of Reasons will be made available for inspection and copying. Requests for the Initial Statement of Reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the Final Statement of Reasons will be made available for inspection and copying once it has been prepared. Requests for the Final Statement of Reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the regulations that the Department of Insurance proposes to repeal, the Initial Statement of Reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying by prior appointment at 45 Fremont Street, 24th Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING:

A copy of the regulations to be repealed and this Notice (including the Informative Digest, which contains the general substance of the regulations to be repealed) will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS:

Documents concerning this proceeding will be available on the Department's website. The documents shall include the regulations which the Department of Insurance proposes to repeal, the Notice of Hearing and Informative Digest, the Initial Statement of Reasons, and, when it has been prepared, the Final Statement of Reasons. To access documents concerning this proceeding, go to <http://www.insurance.ca.gov>. Find the link "QUICK LINKS" on the right side of the screen. Under "For Insurers" under the "QUICK LINKS" link, select "Regulations." Click on the "Proposed Regulations" link. Select "Search for Proposed Regulations." When the search field appears, enter "REG-2008-00033" (the Department's file number for this regulation repeal proceeding).

MODIFIED LANGUAGE:

If the regulations repealed by the Department differ from those which have originally been made available but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of repeal. Interested persons should request a copy of these regulations prior to their repeal from the contact person listed above.

Dated: November 4, 2008

STEVE POIZNER
Insurance Commissioner

By: /s/ _____
Bill Gausewitz
Counsel to the Commissioner

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